

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

June 1, 2009
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Degginger, Deputy Mayor Balducci, and Councilmembers Bonincontri, Davidson, Lee and Noble

ABSENT: Councilmember Chelminiak

1. Executive Session

Deputy Mayor Balducci opened the meeting at 6:00 p.m. and declared recess to Executive Session for approximately one hour to discuss two items of property acquisition, one item of labor negotiations, and one item of pending litigation.

The Study Session resumed at 7:10 p.m., with Mayor Degginger presiding.

2. Study Session

- (a) Off-leash Study Report and Recommendations

[Agenda Item postponed to June 15, 2009.]

- (b) Options to Address Abandoned Shopping Carts

City Manager Steve Sarkozy recalled that the issue of abandoned shopping carts throughout the community has been a concern of the Council's for some time.

Land Use Director Carol Helland referenced packet materials beginning on page SS 2-7. She noted previous direction from the Council to monitor the issue of abandoned shopping carts and collect data for one year, and to work to educate retailers and residents about the problem. These activities have been conducted and included open house forums for residents, a meeting with the Northwest Grocery Association, and outreach to multifamily housing developments experiencing a higher level of abandoned shopping carts.

Ms. Helland reviewed staff's recommendations for addressing the issue through code amendments including declaring abandoned carts a nuisance, providing a definition of

abandoned shopping carts, requiring retailer identification labeling to facilitate enforcement, and applying a civil violation procedure.

Staff has identified two options for handling the abandonment of carts as a civil violation. The first is a traditional model that is complaint based on private property, with a more proactive approach on public property. It provides the opportunity for voluntary compliance, and failure to do so would result in a required hearing before the City's Hearing Examiner. Escalating penalties could be imposed. Attachment C [Page SS 2-23 of the meeting packet] provides a draft Ordinance that incorporates this traditional model.

The second civil violation option is a proactive model of enforcement on both public and private property, similar to the manner in which Sign Code violations are handled by the City. There would be no opportunity for voluntary compliance, and automatic fines would be imposed for nuisance carts at the rate of \$100 per day, if applied to be consistent with the fines for Sign Code violations. Citizens would have the opportunity to appeal a fine to the Hearing Examiner.

Ms. Helland explained that the adoption of a civil infraction process enables police officers to initiate contact with individuals for the purposes of educating, assisting, warning, or ticketing. Staff recommends moving forward with a civil infraction approach and is seeking Council direction regarding the two options.

Responding to Mayor Degginger, Ms. Helland explained that there is a state model theft ordinance related to shopping carts. If a retailer labels its shopping carts, it is possible to charge individuals with misdemeanors for cart theft. State law provides a model for cart labeling requirements. Staff did not pursue the option of charging individuals with theft because they must be caught in the process of taking the cart, it is difficult to prove that they had an intent to permanently deprive a shopping cart owner/business of its carts, and a retailer must be willing to press charges.

Kyle Aiken, Police Legal Advisor, explained that the primary issue associated with the intent to permanently deprive is that usually when a person is rolling a cart down the street, he or she is not intending to keep it.

Deputy Mayor Balducci said she is pleased that this issue is being addressed. She reported that a cluster of abandoned shopping carts has been sitting at a bus stop on 156th Avenue for the past week. She is frustrated that retailers have not taken a more proactive role in retrieving their carts and addressing the issue. Ms. Balducci is in favor of the traditional model which allows voluntary compliance, escalating fines, and the opportunity for a warning before fines are imposed. She would like staff to work with retailers to identify ways for containing carts to their property.

Responding to Ms. Balducci, Ms. Helland said the traditional model requires only minor revisions to the code. The most significant change is that it declares shopping carts that are abandoned outside of a merchant's containment area as a nuisance. The City can then enforce the nuisance violation through the application of the civil violation procedures [Bellevue City

Code 1.18]. These procedures require the City to contact the violator (i.e., retailer) in writing and to request voluntary compliance. The letter describes the consequences of non-compliance including fines and potential referral of the matter to the Hearing Examiner.

Deputy Mayor Balducci suggested a delayed effective date to allow time for retailers to put corrective practices in place.

As additional information, Ms. Helland noted that within the traditional model of code enforcement, the Hearing Examiner has broad discretion in setting fines. Staff's proposed language regarding shopping cart violations refers to a fine of \$100 per day, without specifying whether the fine applies to each cart.

Deputy Mayor Balducci said she is sympathetic to the position that, if a retailer takes reasonable steps to prevent cart removal from its premises and carts are still removed, there should be some way for a retailer to address this with their customers who are taking the carts. She questioned the ability for complaint-based enforcement against individuals.

Ms. Helland said the draft Ordinance reflecting the traditional approach [Attachment C in meeting packet] describes individuals who could be held responsible for a violation, which includes the person causing abandonment of a shopping cart and/or causing a cart to leave the containment area. This allows a retailer to report a complaint against an individual to a Code Compliance Officer.

Ms. Helland explained that the soonest the Ordinance could go into effect is late July. Staff proposes additional aggressive outreach with retailers and the community before the regulations become effective. Responding to Ms. Balducci, Ms. Helland said retailers would be required to label their carts, and failure to do so would be enforceable through the civil violation process.

Responding to Councilmember Bonincontri, Ms. Helland said the shopping cart containment area is defined in the draft Ordinance under Section 9.10.010 [Page SS 2-25 of meeting packet]. Councilmember Bonincontri spoke in favor of providing the ability to enforce code requirements.

Councilmember Davidson expressed concern about designating who is responsible for the cart removal – the retailer or the customer. His perspective is that individuals removing the carts from the retailer's property are aware that they should not be doing so, and that they should be held accountable. Police Chief Linda Pillo said the code allows officers to cite individuals as well.

Councilmember Lee expressed support for pursuing the enforcement related to abandoned shopping carts.

Councilmember Noble said he is unclear about the civil infraction process, and whether it allows a police officer to issue citations to people walking down the street with shopping carts. Chief Pillo said officers will be able to issue infractions in these instances. Councilmember Noble

questioned whether this is a good use of police officers' time. Chief Pillo responded that it is preferable for officers to not have to spend their time this way. However, the process provides a two-pronged approach involving retailers and customers as a way to address this issue that is increasingly becoming a problem.

Councilmember Noble suggested that stopping and warning individuals rolling shopping carts down the street could go a long way in stopping the problem. While he is hesitant to have police officers using their time in this way, he is willing to see whether the problem can be successfully addressed through this approach.

Councilmember Bonincontri noted that some retailers provide personnel to assist customers with transporting their purchases to their vehicles, and the employee then ensures the cart is returned to the store. Ms. Helland confirmed that some retailers have approached the problem in this way. Other solutions by retailers include an example from Portland in which businesses pooled their funds to pay a service to collect carts on a routine basis. Some retailers have discontinued providing carts, and others have attached a device to carts that prevents them from being removed from the store.

Mayor Degginger is skeptical that voluntary compliance will be successful based on experience within the community during the City's outreach efforts over the past few years. Ms. Helland agreed that retailers have not been very responsive to the issue.

Mayor Degginger supports a more aggressive, proactive approach to enforcement as a civil violation. However, he shares Councilmember Noble's concern about whether this is a good use of police officers' efforts.

Councilmember Lee favors moving forward with the traditional model, which he hopes will lead to more voluntary compliance.

Responding to Councilmember Davidson, Ms. Helland said staff plans to monitor the issues and to track civil violations in order to report back to Council about observable improvements.

Mayor Degginger stated he is hearing an interest from the Council in proceeding with the traditional model.

Ms. Helland noted that staff anticipates presenting the code package for Council action on July 6.

3. Council Business and New Initiatives [Regular Session Agenda Item 6]

Councilmember Lee attended the Transportation Commission meeting. He participated in the DUI presentations at three high schools and attended the Bellevue Youth Link Leadership Awards event.

Councilmember Davidson attended meetings of the Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC) and the Cascade Water Alliance Board. He attended the final performance of the Bellevue Chamber Chorus' 25th season.

Deputy Mayor Balducci attended the Lake Hills Shopping Center groundbreaking, Youth Link Leadership Awards, and the Bellevue Downtown Association breakfast.

Mayor Degginger reported on the Bellevue Jazz Festival.

Councilmember Bonincontri attended the NE 2nd Street project open house, Youth Link Leadership Awards, BDA breakfast, a realtors group's presentation on housing and economic recovery, Bellevue Jazz Festival, and the Bridle Trails neighborhood picnic.

Councilmember Noble attended the Bridal Trails block party/picnic. He attended the Human Services Commission meeting regarding shelter preparedness for severe weather and Community Development Block Grant funds newly available through the Recovery Act.

At 8:03 p.m., Mayor Degginger declared recess to the Regular Session.

Myrna L. Basich
City Clerk

/kaw